



ZONING CODE BULLETIN

DATE EFFECTIVE: January 1, 2024

ZONING TOPIC: Applicability of Replacement Unit Provisions to Non-Residential Developments and Conversions

Background

Beginning January 1, 2024, new State legislation (AB 1218) prohibits the City from approving *any development project* that requires demolition or conversion of one or more existing “protected” housing units, or where demolition of a “protected unit” occurred within the last five years, unless replacement housing units are provided. Prior to 2024, new housing development projects were subject to these replacement unit requirements, but non-residential development projects were not.

1. What types of development projects are required to replace housing units?

All projects within the City of Oakland that propose to demolish, convert, change the use, or rebuild “protected” residential units must “replace” those units, except as described below. “Development projects” include any change of use that requires a zoning clearance, even if no building permits are required.

In limited circumstances, industrial development projects that would require demolition of an unpermitted or non-conforming residential unit *may be* exempt from the replacement unit provisions if the unpermitted unit would not be allowed in the zoning district. Because Work/Live units are conditionally permitted in industrial zones, an applicant for demolition or conversion of those units would be required to replace the units even if the Work/Live unit is unpermitted. However, a sponsor for an industrial project would not be required to replace other residential facility types in the industrial zones that do not allow residential facilities other than Work/Live (e.g., a single-family home in the CIX, IG, or IO zoning districts).

2. What types of housing units must be replaced?

Protected units that must be replaced are units that meet any of the following criteria:

1. Affordable housing units that are deed-restricted (or were restricted within the past five years) to households earning below 80 percent of Area Median Income (AMI);

2. Units subject to a local rent control program. In Oakland, units subject to the Rent Adjustment Ordinance include, but are not limited to, units constructed, permitted, or actually occupied prior to 1983;
3. Units currently occupied by low-income renter household earning below 80 percent of AMI, or previously rented by low-income households within the past five years; and
4. Units vacated under the Ellis Act within 10 years prior to development application.

Protected units may include Joint Living and Working Quarters (JLWQs), Work/Live units, and live/work units in any zone that permits (or conditionally permits) those unit types.

3. What does it mean to “replace” a protected unit?

Any development project that would demolish any of these protected units must, as a condition of approval, provide replacement units of the same number of bedrooms, and at an affordable rent or sales price to households of the same or lower income category as that of the last household in occupancy. Rental units must remain under the affordability restriction for a period of 55 years.

Where the household income of current or previous occupants is not known, the replacement units must be provided as affordable to low-income households (earning up to 80% of AMI) in an amount proportional to the number of low-income renter households present in the jurisdiction according to the most current data from the Comprehensive Housing Affordability Strategy (CHAS) database provided by the Department of Housing and Urban Development (HUD).

Where the existing units to be demolished are subject to a local rent control program and the last household in occupancy earned moderate or above moderate income, meaning those earning above 80 percent of AMI, the project must provide replacement units affordable to low-income households (i.e. earning up to 80 percent of AMI) for a period of at least 55 years.

4. What are the developer’s obligations to existing occupants¹?

In addition to providing replacement units, the development project must comply with the following:

- Any existing occupants must be allowed to occupy their units until six months before the start of construction activities or commencement of a new use;
- Any existing occupants that are required to leave their units must be allowed to return at their prior rental rate if the demolition or change of use does not proceed and the property is returned to the rental market;
- The applicant must agree to provide (a) relocation benefits to the occupants of any protected units that are lower income households and (b) a right of first refusal for a

¹ For the purposes of AB 1218 requirements, “existing occupants” includes any occupants evicted in the 10 years prior to development project or change of use application pursuant to the Ellis Act.

comparable unit available in the replacement housing development affordable to the household at an affordable rent or an affordable housing cost. (This provision does not apply to a development project that proposes to demolish a single protected unit and replace it with a single residential unit elsewhere in the City.)

5. What are ways a developer of a non-residential project can comply with the replacement unit provisions?

A non-residential project applicant must ensure that replacement housing is developed elsewhere within the City of Oakland and developed prior to, or concurrent with, the proposed project. Once the replacement units have been developed or secured, a regulatory agreement that restricts the appropriate number, size and affordability levels of replacement units must be approved by the City and recorded on the housing development prior to issuance of the first construction-related permit for the non-residential project. Where the project is changing the use from residential without associated construction, the regulatory agreement must be recorded before the City will issue the Planning approval for the change of use.

The applicant may contract with another entity to develop the required replacement housing by deed restricting units in the other development. At the time of issuance of the construction-related permit or change of use permit for the non-residential project,² the replacement housing must be under construction or completed within the last twelve (12) months, and the residential developer must have (a) recorded the required regulatory agreement approved by the City (as described above) and (b) provided a signed agreement that any existing occupants will be provided the right of first refusal in the new development as required.

Notice Regarding Legal Advice: This bulletin is for informational purposes only and does not constitute legal advice. Persons seeking legal advice should consult with an attorney. The [Alameda County Bar Association Lawyer Referral Service](#) is one of several local attorney referral services, and can be reached at 510-302-2222, option 4.

RECEIVED AND APPROVED BY:



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² For non-residential projects not involving construction, the replacement housing must be completed at the time of the change of use permit or zoning clearance.